

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAVIN AMIR ISAAC, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ELROY LUCKY JONES,

Respondent-Appellant.

UNPUBLISHED
September 3, 2009

No. 290044
Oakland Circuit Court
Family Division
LC No. 08-748844-NA

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the January 16, 2009 order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (h) (parent's imprisonment will deprive the child of a normal home for more than two years). We affirm.

The DHS filed a petition for permanent custody of the minor child with respect to respondent in July of 2008. It alleged, among other things, that the mother was physically abusive toward the child. With regard to respondent, it alleged that he had an extensive criminal history, was serving a life sentence, "is unable to support his child . . . and has not provided an appropriate plan for the care of the child." Following the preliminary hearing, the court authorized the petition. The child was placed in foster care.

During the adjudication hearing, the trial court noted that the mother had admitted to physically abusing the child. The court received a certified copy of records relating to respondent's criminal case in Wayne County, LC No. 06-007202-01. Respondent was charged with first-degree premeditated murder and felony murder, first-degree home invasion, felon in possession of a firearm, and felony-firearm for an incident that occurred on June 7, 2006. He was tried before a jury in October 2006 and found guilty as charged on all counts. Respondent appealed, and this Court reversed and remanded for a new trial because most of the transcript could not be produced and the parties could not settle the record. *People v Jones*, unpublished order of the Court of Appeals, entered February 27, 2008 (Docket No. 275984). Respondent was tried again in July 2008 and was again found guilty as charged on all counts. He was sentenced in August 2008 to mandatory life without parole on the murder conviction and to lesser terms on

the remaining convictions.¹ The court allowed petitioner to amend the petition to indicate that respondent was convicted of the offenses on July 31, 2008 and sentenced on August 21, 2008.

The court found that it had jurisdiction over the child based on respondent's criminality, his failure to support his son, and his failure to provide proper care and custody when the child "was being physically abused by his mother." At the dispositional hearing the court, relying in large part on respondent's incarceration, found that the statutory grounds for termination had been proved by clear and convincing evidence. The court acknowledged that respondent and his son had a significant bond. Nonetheless, the court found it in the child's best interest to terminate respondent's parental rights. This appeal followed.

This Court reviews for clear error the trial court's findings that a ground for termination has been established. MCR 3.977(J); *In re Rood*, 483 Mich 73, 90-91 (Corrigan, J.); 126 n 1 (Young, J.); 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). This court also reviews for clear error the trial court's findings that termination is in the best interest of the child.

The trial court did not clearly err in finding that §§ 19b(3)(g) and (h) were established by clear and convincing evidence. MCR 3.977(E)(3); *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). The child came into care because their mother was physically abusive and unable to properly care for him. Respondent was unable to care for the child since he was incarcerated and awaiting a new trial on first-degree murder and other charges. He was subsequently convicted and is serving a mandatory life sentence.

Further, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). Although respondent and the child had developed a bond, respondent had been absent from the child's life for over two years because of his incarceration and respondent had only seen the minor child recently because respondent's sister attempted to renew their relationship. Notably absent was any evidence that respondent had ever taken the initiative to establish contact with the child. Respondent's mandatory life sentence precludes any likelihood of reunification or a normal father/son relationship, and termination will better serve the child's interests by allowing him a chance for

¹ Respondent's claim of appeal is pending in this Court, Docket No. 287734.

permanence and stability. Therefore, the trial court did not clearly err in terminating respondent's parental rights to the child. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra